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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,213	02/24/2004	Willy Poppe	POPP3001/JEK	8412

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EXAMINER
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BROWN, JAYME L

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/784,213

Applicant(s)

POPPE, WILLY

Examiner

Jayme L. Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite because it is unclear if the transition phrase is meant to be open language or closed language. The claim states in lines 6-7 "method mainly consists," which is not an acceptable transition phrase. The claim should be amended to - - comprising - - if open language is intended or - - method consists of - - if closed language is intended. For the purposes of this office action, the claims are treated as

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being in a middle ground, and "method mainly consists" is taken to be - - method consisting essentially of - -.

Regarding claim 1, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poppe (U.S. Patent 4,194,255) in view of Contreras (U.S. Patent 5,797,154) and Giori et al. (U.S. Patent 6,684,433).

Regarding claim 1, Poppe teaches a method for manufacturing a tubular, resilient body for pillows, mattresses or the like, wherein the method consists essentially of providing slits in a foam block of well determined dimensions; bending two opposite ends of the block (foam strip) towards each other; fixing both ends in order to form the aimed tubular, resilient body, wherein at least a part of the cells present in the foam are broken open (Column 3, lines 8-62; Figures 1 and 2).

Poppe is silent towards a step of cutting the block (strip) out of a foam layer that has slits. Contreras teaches cutting a pillow structure from a larger slab of cushioning material (foam layer) (Column 3, lines 14-33). One skilled in the art would have readily appreciated cutting the block out of the foam layer or having the block already prepared to the correct dimensions as they are both conventional ways to obtain the foam strip required to make the tubular, resilient bodies and are obvious alternate expedients. One skilled in the art would have also readily appreciated that the slits could be provided in the foam layer prior to cutting or they could be provided in the strip (block) after being cut to the desired dimensions, since they are alternate expedients obvious over one another and both result in the same material for the tubular, resilient body.

Poppe also teaches that the tubular body is made of synthetic foam or the like (Column 1, lines 57-61), but is silent towards the synthetic foam being viscoelastic foam. Giori et al. teaches that it is known in the prior art that viscoelastic foam is used in mattresses and support pads (Column 1, lines 20-26). Contreras also teaches using viscoelastic foam in pillows (Column 3, lines 18-19). One skilled in the art would have readily appreciated that one type of synthetic foam that could be used to make the tubular bodies is viscoelastic foam, because it provides improved comfort and support and exhibits a slow recovery time.

In summation, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use viscoelastic foam and to cut the strip (block) from a foam layer with slits in the method of Poppe as suggested by Giori et al. and Contreras, respectively.

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Regarding claim 2, one skilled in the art would have readily appreciated that the cells would be broken open when the foam is bent and pressed together in the method of Poppe.

Regarding claim 3, Poppe teaches that the slits (incisions) are provided in the axial X-X' direction of the tubular, resilient body (Figures 1 and 2).

Regarding claim 4, Poppe teaches that the far ends of the strip are bent such that a tubular body is formed with a biconical or almost biconical shape on the outside (Figure 2).

Regarding claim 5, Poppe teaches that the strip is stretched at least in its longitudinal direction when being bent, whereby the slits are drawn open in order to form cavities (hollows) (Column 3, lines 8-62; Figure 2).

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jayme L. Brown** whose telephone number is **571-272-8386**. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 571-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Jayme L. Brown*

Jayme L. Brown

*John T. Haran*  
JOHN T. HARAN  
PRIMARY EXAMINER